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The Los Angeles Bar Association
BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

TO ALL MEMBERS:

On Thursday, October 19, 1933 at the Biltmore Hotel, 6:00 p. m. there will be a Joint Meeting of the Bar Association and the Chamber of Commerce. Unusual Program. See details on page following. Informal.

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Meeting and Dinner

of the

LOS ANGELES BAR ASSOCIATION

and

LOS ANGELES CHAMBER OF COMMERCE

will be held on

THURSDAY, OCTOBER 19, 1933, 6:00 P. M.

in the **Sala d' Oro**

BILTMORE HOTEL

The Distinguished Speakers will be:

HON. J. REUBEN CLARK, JR.

Recently U. S. Ambassador to Mexico; one of America's distinguished lawyers, diplomat and statesman, and

HON. P. ORTIZ RUBIO

Former President of the Republic of Mexico.

Mr. Clark will speak on

"The Law, Commerce and International Relations"

Mr. Clark has filled many high offices of the United States, including Solicitor of the Department of State; Acting Secretary of State; Chairman, American Preparatory Committee to Third Hague Peace Conference; General Counsel, British-American Claims Commission; Special Counsel, American-Mexican Claims Commission.

Music and Entertainment by

Jose Arias' Mexican Troubadours

The Los Angeles Bar Association and the Chamber of Commerce have combined to make this dinner meeting the outstanding event of the year.

Informal **Tickets $2.00**

Guests are Welcome

Make your Reservation immediately on the enclosed card.

C. E. McDowell,
Chairman, Program Committee.

Los Angeles Bar Association Bulletin

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THE NATIONAL BAR PROGRAM

FOLLOWING the recent meeting of the American Bar Association at Grand Rapids, Earl W. Evans, newly-elected President, addressed a letter to All Members of the Bar, which he asked all local bar publications to print. President Evans says, in part:

"When the history of our profession is written, the Conference of State and Local Bar Association Officials, held on August 29th, may constitute an important landmark.

"At that meeting a National Bar Program was definitely decided upon. A project for focusing the attention of lawyers in all parts of the country on a few important subjects was adopted and will be carried out during the coming year.

"The plan for a common effort to solve the most troublesome problems of the profession will go far toward establishing on a firmer footing the position of leadership in the affairs of state and nation rightfully belonging to the lawyer but which he now stands in danger of losing.

"The subjects which were selected by the conference of bar association presidents and secretaries and which were ratified by the Executive Committee of the American Bar Association, were:

"1. Criminal Law and its Enforcement.
"2. Legal Education and Admissions to the Bar.
"3. Unauthorized Practice of the Law.
"4. Selection of Judges.

"A clearing house is being established in the office of the American Bar Association in Chicago, where information on these and other topics will be available and to which reports should be made of any action or activity in bar associations over the country. It is hoped in this way to crystalize the opinion of lawyers on these important matters and to develop a national sentiment which will represent the attitude of the bar.

"I feel that this is a great opportunity for the bar to exert its influence and by a unity of effort in terms of work make an important contribution to the improvement of the administration of justice.

"Stratification of the Bar"

Shall We Have Barristers and Solicitors?

DEAN WILLIAM G. HALE, University of Southern California, who attended the American Bar Association meeting at Grand Rapids as a delegate of the Los Angeles Bar Association, has submitted a report to the Trustees on the outstanding features of the sessions. At the "Conference of Bar Association Delegates" held on August 28, among the several subjects discussed by eminent lawyers, was "Stratification of the Bar." Doctor Hale's report says:

"The address by the chairman, Mr. D. A. Simmons, was entitled 'Stratification of the Bar.' He traced in a scholarly and analytical way the distinction that has been made in other countries between those attorneys who are entitled to appear in court and those who are confined to office practice, stressing the fact that such a system emphasizes the element of specialization in the practice of the law. He also pointed out how, under that system, very definite and thorough apprenticeship training preceeded the assumption of full responsibility for the trial of a case as a barrister. In contrast with that system he emphasized as entirely irrational our process of licensing anybody and everybody who passes a state bar examination to engage in any and every kind of law practice and thereby holding them out to the public as qualified to render any kind of legal service. He drew a striking contrast between our profession and the medical profession.

"Mr. Simmons also dealt with the question of proposed restrictions on the number to be admitted to the profession from year to year. With a great deal of acuteness he pointed out that overcrowding as such, as an evil, obtains only in respect to litigation. Severe competition obviously may lead lawyers to encourage rather than discourage litigation. That is an evil. However, encouraging people to get legal advice with reference to proposed business deals and to have papers drawn which would protect them in their deals would not be in itself an evil. He likens that phase of law practice to preventive medicine. He pointed out that in the early history of Rome, the barrister class was restricted in number, but not the solicitor class.

Judicial Selection

"A discussion of the subject of Judicial Selection under the three heads indicated in the program was interesting and effective, but did not present any arguments that were essentially novel. Judge Crump, as the senior member of our group both in experience and in official position in the California Bar, reported on the program of Judicial Selection which has been initiated through our pending constitutional amendment.

"The Bar Integration movement received passing consideration as well as other matters presented in the committee reports listed in the program.

"While no vote was taken, the sentiment of bar association delegates quite obviously favor some form of judicial appointment as distinguished from popular election.

"I feel that the particular contribution that California is making is in pointing the way to a practical compromise which most states will have to come to in the process of getting away from the elective system. That compromise must include first, provision for the continuation of the elective system in rural parts of the state, and, second, provision for popular expression with reference to the judges at some point.

Committee on Coordination

"The principal feature of the session of August 29th, was the presentation of the report of the committee on coordination of the American Bar Association. The mimeographed memorandum by the Committee on Coordination issued in June, 1933, a copy of which was placed in my hands, was supplemented by a printed report. President Martin addressed the group and vigorously urged a widespread cooperation on the part of the entire legal profession in the United States in support of a limited program to be developed for the ensuing year by the American Bar Association looking to improvements in the profession and in the administration of justice.

"While the meeting itself did not attempt to make any selection, and while no final selection has yet been made, I was informed

that the executive committee of the American Bar Association feels disposed to develop its program around the following five topics in the National Bar program of ten listed topics:

1. Criminal Law and Its Enforcement.
2. Unauthorized Practice of Law.
4. Selection of Judges, and Bar Activities in Connection Therewith.
8. Legal Education and Qualifications for Admission to the Bar.
10. Promotion of Proper Professional Conduct.

The other suggested list of subjects in the National Bar program are:

3. Procedure and Practice in Disbarment and Discipline.
5. Rule-Making Power in Courts.
6. Jurisdiction of the Federal Courts.
7. Regulation of the New Liquor Traffic.
9. Delay in Court Procedure.

"However, they wish to have local associations, through their officers, make suggestions. My own feeling is that number nine, "Delay in Court Procedure," should be included, limiting it, however, to appellate procedure. I would suggest this limitation, not because the whole subject is not important, but because it may be wiser to concentrate for a certain period upon one phase of a subject.

"The coordination plan calls for the appointment of a field worker and general director to keep in touch with local organizations and assist them in plans of cooperation. I am informed that Mr. Shafroth will take on those duties. The program cannot succeed without a considerable measure of active personal direction and Mr. Shafroth's experience in legal education and admission to the bar movement admirably fits him for this wider service.

"I gather the impression that there is a very widespread and decided feeling that we must move as rapidly as possible toward a complete formal integration of the entire American Bar and this plan of voluntary cooperation under the leadership of the American Bar is looked upon merely as a step in that direction."

Dorothy Lenroot Bromberg

WHEREAS, in the passing of Dorothy Lenroot Bromberg on the nineteenth day of September, 1933, the Women Lawyers' Club has sustained the loss of one of its officers and most valued members, and in order therefore to record a memorial and tribute to her memory and to extend to her family deep sympathy in their grief.

NOW, THEREFORE, we, the members of the Women Lawyers' Club, shocked by her death, pause to mourn her loss and to pay our inadequate tribute to her and to the qualities of mind and heart which distinguished her.

Although a junior member of the Bar, her short, but brilliant, career as Assistant United States Attorney for the District of Los Angeles, California, inspired in her friends the feeling of certainty that she was destined to attain unusual distinction.

She combined with the qualities of leadership, unflinching integrity and adherence to the highest ideals of her profession. She won the respect and admiration of all who knew her and the warm affection of a host of friends.

The influence of her spirit remains stamped upon our hearts and memories.

Therefore, BE IT RESOLVED, that we hereby express our deep sympathy to her family and direct that the foregoing be spread upon the minutes of the Club and a copy be sent to her family.

THE WOMEN LAWYERS' CLUB,
MARGARET K. HOLCOMB, *President.*
KATHRYN FLANAGAN, *Secretary.*

Individualism and the Police Power

By Robert A. Morton, of the Los Angeles Bar

UNLESS ALL SIGNS FAIL, the Bench and Bar in the year 1933 confront the most critical development of economic and social law since Civil War days. We are witnessing, thus far passively, many far-reaching changes in business and social relationships which must inevitably write an amended chapter in law. In the stress of a national emergency a new type of political and economic leadership has initiated important experiments in industrial affairs that appear to mark the end of the era of intensive individualism in America.

Nothing is wholly new under the sun. History teaches that all nations must in time restrain the natural play of economic forces for the general welfare. While the type of remedy may vary according to a people's needs, stability and capacity for co-operative government, the fundamental fact is that individualism gives way to collectivism. A planned economy is collectivistic and tends to create a managed society, and when mature the two constitute the socialistic state, with or without the element of fascism. The present effort to reorganize industry is basicly a collectivistic movement and the trend will not doubt be permanent, for social programs rarely retract a path once traversed. It follows that many of our legal concepts will require revision or a more liberal interpretation.

Rise to Power

The unparalled rise to power of the United States, which procured for its citizens the highest standard of living and the most complete security of property and person probably ever achieved by any nation, has been built upon the philosophy of individualism. The American type of individualism was defined by Herbert Hoover in his monograph, "American Individualism," as follows:

> "Our individualism differs from all others because it embraces these great ideals: that while we build our society upon the attainment of the individual, we shall safeguard to every individual an equality of opportunity to take that position in the community to which his intelligence, character, ability, and ambition, entitle him; that we keep the social solution free from frozen strata of classes; that we shall stimulate effort of each individual to achievement; that through an enlarging sense of responsibility and understanding we shall assist him to this attainment; while he in turn must stand up to the emery wheel of competition."

In this, the fourth year of the economic emergency, American public opinion appears to be of two minds: first, that the ills of the period can and should be repaired by the operation of natural corrective forces, and the individualistic system retained; second, that individualism has run amuck and destroyed itself, and that some form of managed industry and society must be developed. The latter mind is in the majority and is in power. Of the two opinions one holds to the past, while the other looks with greater faith to an experimental future.

Public Welfare

Two of the main pillars upon which individualism rests are the inviolable rights of property and the sanctity of contract, and these in turn stand upon the not too sure foundation of the Fourteenth Amendment and a bare majority of the Supreme Court; for the growing tendency is to hold property and contract subordinate to the public welfare by authority of the police power—that most convenient and elastic of juridical inventions.

While heretofore the Supreme Court has invoked the police power only where the subject matter was deemed clothed with a public interest, nevertheless the line is shadowy, and the limit is only marked by the economic and social philosophy of those minds which finally pass upon constitutional questions. In the present situation, therefore, the query and controversy as to what *is* the legitimate use of the police power under the Constitution is henceforward certain to occupy the center of the legal and political stage and to claim the most earnest attention of lawyers and judges.

Whether or not the ostensibly voluntary Blue Eagle is actually a bird of another color and may show its claws, as has been

suggested by its sponsors, any general control of business and industry by government must at numerous contacts impair property and contract and thereby encounter the Fourteenth Amendment. The prescribing of hours and wages and the limiting of competition and production must certainly necessitate the control of prices and the complete domination of all industry. Indeed there can be no halfway measures in dealing with the highly complicated and interdependent mechanisms of industry and finance.

New Economic Basis

Governmental activities as to wheat, cotton, oil and many other commodities are now directly or indirectly aimed at price-fixing, while numerous states, including California, have by statute suspended the operation of contracts, fixed prices for goods and services, forbade the tradesman to sell his merchandise below cost, or to give it away as a premium, and have limited production. Although such innovations are claimed to be justified by the existing emergency, it is improbable that such power once acquired and sustained by the courts will be relinquished in our day; for where all industry is required to reorganize upon a new economic basis, where the laws of supply and demand are suspended and the financial and business structures become managed, surely all of the immense industrial and social forces thereby dislocated and differently reassembled will require, if any new plan is to endure, the powerful and continued support of the agencies which initiated so vast an experiment.

Ruled by Law

But we are still a nation ruled by law. Our Supreme Court, in its momentous and oftimes stormy history, has passed upon and approved or disapproved many social experiments, and its word has been final. Already a number of the vital constitutional questions out of the multitude born of the present situation and related to the police power have been discussed by trial courts and will in due time reach the highest tribunal. Questions relating to mortgage and other moratoria, price fixing and limiting production have been the first to invite judicial opinion. The resulting de-

cisions while generally evidencing a liberal conception of the emergency use of the police power are not unanimous as between the various states. The clash of juristic and social conceptions noted in all such cases is well indicated in the New York milk price-fixing case. (*People v. Nebbia*, N. Y. App., July, 1933.) The majority opinion declared these sentiments:

"Doubtless the statute before us would be condemned by an earlier generation as a temerarious interference with the rights of property and contract. * * * But we must not fail to consider that the police power is the least limitable of the powers of government and that it extends to all the great public needs; that constitutional law is a progressive science; that statutes aiming to establish a standard of social justice, to conform the law to the accepted standards of prices for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view. * * * With full respect for the Constitution as an efficient frame of government in peace and war, under normal conditions or in emergencies; with cheerful submission to the rule of the Supreme Court that legislative authority to abridge property rights and freedom of contract can be justified only by exceptional circumstances and, even then, by reasonable regulation only, and legislative conclusions based on findings of fact are subject to judicial review, we do not feel compelled to hold that the 'due process' clause of the Constitution has left milk producers unprotected from oppression and to place the stamp of invalidity on the measure before us. * * * We are unable to say that the legislature is lacking in power, not only to regulate and encourage the production of milk, but also, when conditions require, to regulate the prices to be paid for it, so that a fair return may be obtained by the producer and a vital industry preserved from destruction. * * * The policy of non-interference with individual freedom must at times give way to the policy of compulsion for the general welfare."

The dissenting opinion of a single Justice includes the following paragraph:

"The special privilege conferred by this statute upon members of a particular class by increasing the price of the product at the expense of laborers, mechanics and all other members of society cannot be regarded as such a necessary or even fairly reasonable substitute remedy as to lie within legislative discretion and to warrant its sanction by the courts. The financial condition of the dairy farmer is and has been most distressing. The same is true respecting artisans, professional men, and women, traders, laborers and members of every calling and occupation. Yet every one is aware that those who can afford to buy milk obtain a wholesome quality. * * * The police power, * * * cannot rise superior to the Constitution. This great instrument of government is not a thing merely to be extolled in academic halls, to be the subject of juvenile orations and to be tolerated as innocuous only so long as its prohibitions are unnecessary in practical ways. It is not quiescent, it is vibrant. It was designated to safeguard not only life and liberty, but also property rights in times of distress and suffering when despairing and desperate majorities in good faith, seek by forbidden methods to correct temporary evils which, serious and distressing as they are, *will prove less permanent and harmful than would the subversion of our fundamental principles of government.*"

Legalistic-Social Question

It would be difficult for a lawyer to read the above statements and fail to recognize their respective sincerity of purpose. At bottom the question is a legalistic-social one that must be answered by each person as becomes his philosophical convictions in that field of thought. Heretofore the police power has mainly been invoked to protect the consumer from the profiteering producer or distributer, whereas present efforts are directed to passing on to the consumer the cost of rehabilitating the many prostrated industries. Price-fixing, however, is only one item in an ambitious economic experiment that must result in casualties to property and contract. Not the least important of the pressing questions is that relating to the right of the individual to freely engage in a private business uncoerced by governmental or group pressure.

Oklahoma Ice Case

What is "an emergency"? Is every flucuation of trade to be deemed such an emergency as will legally justify Federal and State direction of all business from the major industries to the most trivial and inconsequential private activities? In the light of the new program, how will the Supreme Court decide these and many allied questions? As an indicative landmark we have the much discussed Oklahoma ice case (*New State Ice Company v. Liebman*, 285 U. S. 262) wherein the majority opinion and the dissenting opinion by Justices Brandeis and Stone (Justice Cardoza did not participate in the case) stand squarely at odds as to the legitimate scope of the police power.

In that case, which may rival *Dred Scott* as a center of social and economic controversy, the court held that the ice business is essentially a private business and not so affected with a public interest that a governmental agency may limit the number of concerns engaged therein in order to control or reduce competition and thereby stabilize or raise the price level of the product, and that such attempted control violates the liberty guaranteed by the Constitution, and cannot be justified upon the ground that the state is conducting an industrial experiment.

> "This court has definitely said that the production or sale of food or clothing cannot be subjected to legislative regulations on the basis of a public use, and that the same is true in respect to the business of renting houses and apartments, *except* as temporary measures to tide over grave emergencies.(Tyson & Bro. v Banton). * * * Under that amendment (Fourteenth) nothing is more clearly settled than that it is beyond the power of a state to interfere with private business or prohibit lawful occupations or impose unreasonable or unnecessary restrictions upon them * * *. The principle is embedded in our constitutional system that there are certain essentials of liberty with which the state is not entitled to dispense in the interest of experiments."

In a vigorous dissenting opinion Justice Brandeis expounds the extreme paternalistic doctrine that a state may at any time and under all circumstances order the regulation or prohibition of any and all business for the general welfare, with the limitation that the same may not be unreasonable, arbitrary or capricious, and would sweep into the discard the theory that a business must be "affected with a public interest" to qualify it for such action.

Emergency Theory

At this writing it can fairly be conjectured that many of the economic adjustments in the pending experiment will be sanctioned by the Supreme Court under the emergency theory where such measures are deemed to be necessarily and reasonably tied in with the emergency. All injunction proceedings directed against Federal restraints have thus far failed, the courts having expressed doubt as to their power to suspend the operation of the President's Executive Orders even were they inclined to do so, and in every instance the emergency plea has been sustained. Decisions on appeal will soon be had. In August the Supreme Court of the District of Columbia upheld the constitutionality of the price-fixing powers of the Department of Agriculture with the following comment:

> "The court finds that a national emergency exists and that the welfare of the people and the very existence of the government itself are in peril. The day has past when absolute vested rights in contract or property are to be regarded as sacrosanct or above the law. Neither the necessities of life nor commodities affected with a public interest can any longer be left to ruthless competition or selfish greed for their production or distribution."

The courts, constituting as they do the balance-wheel and brake of the Democracy, are necessarily conservative in viewpoint. Nevertheless, judicial doctrines derived from a Constitution so broad in its terms that it affords a wide scope to the art of construction must keep pace with the trend of social standards and needs and guide the body politic to safe havens.

"Medical Testimony and Insanity"

By Clifford A. Wright, M. D., of Los Angeles

(The second and final installment. First installment of Dr. Wright's article appeared in the September issue of the Bulletin.)

THERE are no special requirements necessary for qualifying as an expert witness. In one of the European countries medical experts have to take an examination to be qualified to give testimony before the court. Here almost any man with a medical degree can qualify. Qualifying an individual as an expert lies wholly in control of the court and really has nothing to do with the jury. However, for the psychological effect it may have on the jury, great stress is put on a prospective witness' experience and accomplishments in his special line. Also of extreme importance is the broad and poorly-defined legal definition of insanity. The medical definition and legal definition are different. Originally it was held that a man must be so disturbed in mind as to be no more capable of understanding than if he were merely a wild beast[2].

The present-day definition dates as far back as 1843, to McNaghten's Case (10 Cl. & F. 200). In part, the definition of insanity given is: "A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that at the time of the commission of the alleged criminal act he was laboring under such a defect of reason as either (1) not to know the nature and quality of the act he was doing; (2) not to know the act was wrong". This does not take into consideration uncontrollable impulses which are the product of mental disease and which in many instances may drive the defendant to the commission of a murderous act. Reference is made to this fact by Benjamin Cardoza[2], then Chief Justice of the Court of Appeals of New York State, now Justice of the Supreme Court of the United States. He cites the following cases:

Flanagan v. People, 52 N. Y. 467;
People v. Carpenter, 102 N. Y. 238;
People v. Taylor, 138 N. Y. 398,

and calls attention to the statute: "a morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts forms no defense to the prosecution therefore".

Systematized Delusions

An individual may know in a general way the difference between right and wrong. He may know it is wrong to kill a person, or to steal an automobile, but the question which usually arises is: does he know the quality of his act, or does he know the difference between right and wrong as it pertains to his particular criminal act at the time it is committed? An example may elucidate this. A woman had suffered from delusions of persecution over a period of many years. She heard voices calling her names and making dire threats against her. From this imaginary persecution she had tried to escape but was unsuccessful. These were delusions, but very real in the patient's mind, as all systematized delusions are.

In trying to escape from these persecutory influences she took a 'bus and came to California. On the 'bus she had the same hallucinations of hearing and finally attached all this trouble to a fellow-passenger, a man sitting just in front of her. Remember that to her mind this persecution was unjustified, and unwarranted; she had had no relief from it through any of the authorities, and here she was confronted by the man who she thought was the cause of all her trouble. She shot him in the back of the head, and he proved to be someone she had never seen before. To that woman's mind it was justifiable to do away with her imaginary tormentor, and she was undoubtedly insane in the medical and legal sense of the word, and yet it is hard to convince a jury that a woman who can travel across the continent in a 'bus and is apparently intelligent in other respects (and the paranoiacs, the so-called reasoning insane, have good memories and are intelligent in most respects) could be insane. Many such cases could be quoted.

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[2]Cardoza, Benjamin: What Medicine Can Do for the Law. Bulletin New York Academy of Medicine. Vol. V, No. 7 (July) 1929; 581-607.

It is thought by a good many that insane people are unable to do purposive acts. This is a mistake, for violently insane individuals, particularly paranoiacs, who are the most dangerous type, are capable of purposive acts. Psychiatrists are subjected to criticism undoubtedly because they stand between the criminal and retributive justice. Undoubtedly our profession deals with individuals, while law is concerned with society at large. Force in the control of criminals has failed to accomplish satisfactory results. Many of the crimes reported daily are committed by recidivists, which would indicate that our present method of handling these cases has not materially reduced the number of crimes.

Crime Cost

Statistics show that the cost of crime in the United States is increasing, and was recently quoted at approximately Thirteen Billion Dollars per year[3]. A recent daily paper gives the annual cost of crime as follows:

Year's loss	$11,000,000,000
Spent vainly trying to uphold the law	12,000,000,000
	$23,000,000,000

Dr. H. H. Goddard[4], in 1914, estimated that from 25 to 50 per cent of people in our prisons are mentally defective, and incapable of managing their affairs with ordinary prudence. This undoubtedly includes the insanes, as well as the large group of border-line cases including morons, the mentally deficient, and the largest group of all, the psychopathic personalities as well as the dull normal and the psychoneurotics. Mental defectives include 10 to 20 percent, and the psychopathic personalities at least 33-1/3 percent of the total population of penal institutions.

Endocrinology

A good many years ago, people who were insane were thought to be possessed of the devil. They were likened in some instances to witches. A rather vague idea was had of their true condition. Now we recognize that these unfortunates who are unable to conduct themselves according to our standards are mentally sick just as a person with pneumonia is physically sick, and they are in need of care and attention. Formerly the psychiatrist was largely concerned with making a diagnosis, but now, thanks to a comparatively new branch of medicine, endocrinology*, we can associate definite physical abnormalities, particularly those involving the ductless glands, with the psychopathic states. This branch of medicine offers the best hope in the treatment of insane patients which has arisen in the last fifty years. Many investigators feel that the ductless glands regulate the personality, and it seems definitely proven that the physical conditions has a marked influence over the mental status. Physical examination accompanied by tests give us a better method of studying these abnormal cases and more positive findings on which to base an opinion.

It was unofficially reported in one of the hospitals for the insane in California that 90 per cent of the dementia praecox patients had lowered basal metabolic ratings (a). Ninety per cent of dementia praecox cases show the influence of heredity. In 72 per cent in women there is a history, substantiated by physical findings, of lack of development of the sexual organs, the so-called eunuchoid individuals.

Judd Case

Of the dementia praecox types who have committed serious crimes, and whose condition is based on physical findings, perhaps the best example is Ruth Judd. Her crime is too well known to need further description, except to say that the very way in which she tried to dispose of the bodies of her victims would indicate to anybody that she was insane. Her history disclosed the influence of heredity, and examination showed that she was in an advanced stage of tuberculosis, with severe cough and temperature, and that she was decidedly of the eunuchoid type, due to under-activity of the sex glands. Her history of long periods of amenorrhea or absence of the menstrual function, which coincided with her physical findings, was the probable basis for her delusion that she had become pregnant and had a child. Undoubtedly it also had much to do with the systematized delusional type of insanity from which she suffered. This unfortunate patient has, without question, been insane for years, and

*Endocrinology is a study of the ductless glands.

a. The B. M. R. or basal metabolism rating is a test usually employed as an assistance in the diagnosis of thyroid disturbances.

in her case a diagnosis of mental disease was substantiated by the physical findings.

Corrective Measures

In consideration of criminals our treatment should be prophylactic as well as curative. The police commissioner in New York City once made the statement that 55 per cent of the men in the daily line-up at police headquarters were under twenty-one years of age. Among the school children of today are the criminals and insanes of tomorrow. The earlier treatment is begun the better the results.

A large number of people who have made a special study of criminology feel that the sentencing of all criminals should be entirely in the hands of psychiatrists, probably in association with psychologists, penologists, and others who have made a scientific study of these conditions. Judge Cardoza calls attention to this fact.

In an effort to correct some of these conditions the American Institute of Criminal Law recently recommended the following program:

"1. That in all cases of felony or misdemeanor punishable by prison sentence the question of responsibility be not submitted to the jury, which will thus be called upon to determine only that the offense was committed by the defendant.

2. That the disposition and treatment (including punishment) be based on a study of the individual offender by properly qualified and impartial experts co-operating with the courts.

3. That no maximum term be set to any sentence.

4. That no parole or probation be granted without suitable psychiatric examination.

5. That in considering applications for pardons and commutation, careful attention be given to reports of qualified experts."

As a matter of prophylactic or preventative treatment, all children, especially at the age of puberty should have more careful examination and supervision, particularly from a psychiatric, or better yet, a psycho-endocrine standpoint. Undoubtedly every criminal court at least should have an associated psychiatrist. All psychiatrists should be hired by the court and not by either of the litigants; parole of criminals, particularly recidivists should be under the control of a phychiatrist or others making a special study of criminology. Some such program as is followed in Denver would be an advantage.

Institutions should be established for the detention of insane criminals who through the testimony of psychiatrists, or by other means, have been freed from criminal charges because of insanity. It is not advisable to let them go back into society and perhaps again commit a similar crime. They should be detained in these institutions until the scientists find that they are cured, or able to again resume their places in society.

In closing let me quote again from Judge Cardoza's speech before the New York Academy of Medicine, when after speaking of the relation of the ductless glands to personality in a rather light vein he stated as follows:

"This does not detract from the fullness of my belief that a day not far remote the teachings of bio-chemists and behaviorists of psychiatrists and penologists, will transform our whole system of punishment for crime. Vain is the attempt to forecast here and now the lines of the transfigured structure. We must keep a sharp outlook, or you will supplant us altogether. Do they not tell the fable of Hippocrates that he burned the library of the Temple of Health at Cnidos in order to enjoy a monopoly of knowledge? How it will work out, whether we shall sit beside you or above you, or even perhaps below you, I am not wise enough to say. The physician may be merely the ally of the judge in the business of admeasuring the sentence, or, as to that branch of the work, may even drive the judge away."

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4. GODDARD, H. H.: Quoted in "The New Criminology" by Max Schlapp and Edward H. Smith; p. 148; Boni & Liveright.
5. WILLIAMS, EDWARD HUNTINGTON: The Insanity Plea; p. 33; Williams & Wilkins.

Junior Barrister Activities

With another month's constructive activity added to their professional experience the Junior Barristers of the Los Angeles Bar Association have continued to demonstrate their ableness to be of civic utility.

A committee under the chairmanship of Kenwood B. Rohrer made a comprehensive survey of the financial set-up of the L. A. Bar and reported findings to the Board of Trustees recommending a revised scale of membership dues for future entrants. This schedule, approved and accepted by the governing body, provides as follows:

First year	no dues.
Second year	$ 2.50
Third year	5.00
Fourth year	7.50
Fifth and succeeding years	10.00

The new arrangement, affecting only those members admitted to practice by examination in California, will go into operation at the beginning of the next fiscal year of January 1, 1934, and will not be applied retroactively. Members admitted by motion will not be allowed the reduction on the theory that they have had the benefit of previous practice.

Kenneth Chantry's committee, delegated to investigate the alleged necessity for a special deputy to perform the duties of public defender in the Night Court, brought the matter up in the City Council, which referred it to the Efficiency Committee, who visited the nocturnal tribunal and, with that peculiar sagacity indigenous to efficiency committees, determined that inasmuch as most of the defendants pleaded guilty there was no need of a public defender.

Members of the Junior Barristers who by reason of absence of counsel or surprise have not as yet turned in their entries in the Legal Article Competition have been granted a continuance. Wm. Howard Nicholas, chairman, announces that the contest will positively close on November 15, 1933, at which time one lawyer, one professor, and one judge will be named to adjudicate which four of the worthy entrants will split the $100.00.

A small but enthusiastic delegation of Junior Barristers attended the recent State Bar Convention, and although they were not featured on the program they kept their eyes, ears, nose, and throat open and learned many things which will be invaluable to them when they arrive at the station in life where running conventions will be their pastime.

HELP YOUR FELLOW MEMBERS

The office of the Association has on file a goodly number of applications of attorneys who have been recently admitted and are seeking positions on salaries. The file also contains a limited number of applications of experienced practitioners. In addition to the applications of those seeking salaried positions, a number are willing to render services for desk space, and a few are seeking working arrangements that will permit of their taking care of their own clients.

We also have applications of competent legal stenographers and secretaries.

Telephone Vandike 5701 or Vandike 9992 for further information, and rest assured your call will be kept confidential.

Coordination of the Bar

At the recent meeting of the American Bar Association, there was submitted by the Special Committee on Coordination of the Bar, a report of great interest to the profession. It points out that a National Bar Program sponsored by the A. B. A. is a recognized possibility. Such a program would deal with subjects of the greatest importance to every lawyer, such as unauthorized practice. The members of this committee are: Jefferson P. Chandler, chairman; James H. Corbitt, John A. Elden, Province M. Pogue, and Philip J. Wickser. The report is given below.

FROM THE DATE of its appointment in 1930 until the last annual meeting the Committee on Coordination of the Bar studied the problem of a nationally coordinated bar in its general aspects and sought the opinion, by interview and conference, of the officers and leaders of this Association and of State and Local Associations. Up to that time its definite recommendations were designed to improve the machinery of the American Bar Association in its relation to the whole bar of this country. Proposed amendments to our Constitution and By-Laws were submitted to and considered by the Executive Committee and the General Council, and thereafter, upon notice to the membership, were adopted by the Association at Washington in October, 1932.

The adoption was unanimous, and carried with it an implied mandate for continued effort upon a wider front. Accordingly, your committee submitted recommendations to and conferred with the Executive Committee twice during the winter of 1933. At its May meeting plans were authorized for work to be completed before the annual meeting next August, and certain definitive general principles were considered. These involve the assumption that coordination, as a matter of practical reality, can best be achieved in terms of work rather than through any particular political or theoretical organization of the unit associations necessarily involved. It is recognized that, to enable the various bar associations in this country to work together, an acceptable program of subject matter must be agreed upon. Also, that contacts must be established and data accumulated.

National Program

A National Bar Program, dealing with subjects of importance to every lawyer (such as unauthorized practice, for example), and sponsored by the American Bar Association is a recognized possibility for the future. Such program, for practical reasons, must avoid complexity and deal with only a limited number of subjects of prime importance in any one year. In order that all active associations may focus their effort upon a given set of subjects or problems, machinery must be set up to enable any one association to obtain information as to what work other associations are doing. Likewise, provision must be made for gathering, thereafter, the findings and considered judgment of all the cooperative units, and for their public expression. A genuine cross-section of the opinion and thought of the whole bar of the country may thus be brought into being. Its usefulness is self-evident. It will assist in securing the enactment of beneficial legislation, as well as influence the moulding of an informed professional public opinion. The proposal is that the American Bar Association shall set up the machinery for thus servicing the bar of America.

Such a proposal must, first of all, be laid before the leaders and membership of the associations which are to join in the coordination of effort for which it calls. Accordingly, the Executive Committee, through President Martin, has invited the Presidents and Secretaries of all state and certain local associations to meet at our forthcoming annual meeting at Grand Rapids, at which time their cooperation will be solicited.

Survey Prepared

In preparation for that Conference, the members of the General Council have been requested to communicate to the officers of the active associations in their respective states an outline of the plan set forth

above. The Committee on Coordination has worked to the same end. Assisted by the Executive Secretary, it has gathered information as to official bar personnel and bar activity throughout the country, in order that the framework of organization for coordination may be in readiness. To assist in the development of a National Bar Program, it has had a survey prepared from their Year Books, showing which problems have in fact occupied the attention of the various associations during the past three years. This survey indicates that a great deal of work, in the aggregate, is done by associations each year, but that, while they agree on the importance of the same general subjects, and expend a great deal of effort upon them, their effort is staggered; only a few know what the others are doing, and their committees are insulated. Furthermore, no method now exists for the interchange of material and opinion between active committees from other associations and the Sections and Committees of the American Bar Association doing valuable work in the same fields. An obvious waste of effort results, which the plan for coordination here outlined seeks to remedy.

In further preparation for the annual meeting the Committee on Coordination has sought advices from the committees of this Association and from the General Council in the selection of subjects for tentative inclusion in the National Bar Program.

The desire of the membership for progress in the coordination of the bar of this country has been thus interpreted by your committee during the past year. Much assistance has been received from the Officers, the Executive Committee and the General Council. If general approval is manifested definite accomplishments should make themselves apparent within the not distant future.

JUDICIAL SELECTION BILL

The California State Bar has appointed a "Committee on Public Education Regarding Assembly Constitutional Amendment No. 98," to carry on a campaign between now and the next general election. Although this law, if adopted, will apply only to Los Angeles county, the entire state must vote upon it. The Committee is composed of Dean Rollin L. McNitt, Southwestern University Law School; Edward F. Treadwell of San Mateo; Henriette W. Steinegger, of San Francisco; William H. Anderson, Alfred L. Bartlett, Rosalind Goodrich Bates, Byron Hanna and Karl Lobdell, of Los Angeles.

This bill passed both the Assembly and the Senate at the last session of the Legislature. It provides that the Governor in making appointments, is limited to a list of not more than three nor less than two names submitted to him by the Board, consisting of the Chief Justice, the Presiding Justice of the District Court of Appeals, Division One, and the Senator from the District.

ECONOMIC DEMORALIZATION OF THE BAR

"I have rested the case for better Bar organization upon the ancient appeal of self-defense. A Bar that is threatened by an unprecedented increase in numbers and at the same time by a loss of its business, may justly be apprehensive of economic demoralization. It takes no delirious vision to see that increasing numbers and decreasing income may produce such competition as will overrule all ethical restraints as it has in some lines and in some localities already. To prevent such a condition transcends the mere right of self-defense, it becomes a duty of public service. A collectively impotent and individually predatory Bar would be a collapse of our professional tradition that would stamp our generation as unworthy of its heritage. We are summoned to trial by ordeal. We dare not fail." (From address of Robert H. Jackson, of the New York Bar before Alabama Bar Association.)

Attend the Joint Meeting Thursday.

Power of Court to Modify Alimony

Based Upon Agreement of Parties Approved by Court

By Eugene M. Elson, of the Los Angeles Bar

NOT LONG AGO the writer had occasion to pursue the solution of the following question: Has the Court power to modify a decree of divorce insofar as it concerns the award of alimony to the innocent wife when the award was, at the time of rendition of the decree, based upon an agreement of the parties, either incorporated in the decree or otherwise approved and followed by the Court in determining the award to be made?

The California cases, with the exception of one, did not appear decisive of the question. Interest and curiosity compelled further investigation, resulting in the discovery that the courts of sister states were not by any means uniform in their conclusions.

The selected cases, both in California and elsewhere, with discussion thereof by, and the conclusion of, the writer are herewith submitted for whatever benefit the profession may derive therefrom, and with the hope that the collected authorities may dispense with several hours' research to such members as may from time to time be confronted with the question.

Power to Modify.

Section 139, Civil Code, grants to the Court the power to modify awards of alimony, and reads as follows:

"139. SUPPORT TO WIFE AND CHILDREN ON DIVORCE OR SEPARATION TO WIFE. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife, for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects."

Several of the states have statutes similar, more or less, to section 139, Civil Code.

California Cases

The first case reported was *Soule v. Soule*, 4 Cal. App. 97 (1906). From all that appears in the opinion, the wife as plaintiff was granted a decree of divorce. At the time of granting the decree, the court ordered the husband to pay to the wife $75.00 per month as "permanent alimony." Seven years later the defendant moved the court to "vacate and annul" the portion of the judgment relating to payment of alimony, on the ground that his circumstances had materially changed since the rendition of the decree.

Plaintiff objected to the court entertaining the motion on the ground that inasmuch as no appeal had been taken from the judgment and the time for an appeal had expired, the court had no jurisdiction to make the order requested. This objection was overruled, and plaintiff filed an affidavit alleging agreement between the parties between filing of the action and rendition of the decree, whereby defendant agreed to pay $75.00 per month as alimony to continue during her life if she would assign her interest in some insurance policies to the children and some real estate to him; that she accepted his proposition and that the court signed the decree in conformity with such agreement.

The court at the modification hearing found that no agreement was ever made by defendant to pay $75.00 to plaintiff for her life or for any period, or that said agreement should remain unchanged. The court modified the decree releasing defendant from further payments. Plaintiff then appealed.

Permanent Alimony

The court discussed the meaning of "permanent alimony" and concluded that such term was not meant to designate alimony to be paid for all time, but on the contrary, was alimony to be paid subject to the occurrence of conditions subsequent, and that the word "permanent" was used to distinguish the alimony from that awarded *pendente lite*. Section 139 C. C., *supra*, was cited and it was held that the lower court had, by virtue of said section, jurisdiction to entertain defendant's application even though he had failed to appeal from the judgment. With reference to section 139 C. C., the court further stated:

"This statutory provision enters into every decree in an action for divorce which provides for the payment by the husband of an allowance for the support of the wife, as fully as though it should be incorporated into the terms of the decree. The authority of the court to modify its decree in this respect does not depend upon a reservation therefor in the decree itself, but exists by virtue of a statute, and being conferred upon the Legislature, it is beyond its power to divest itself of such authority." (Citing *Campbell v. Campbell*, 37 Wis. 706.)

No Limitation

The statement in the quoted portion reading "being conferred upon the Legislature" undoubtedly is a misprint and should read "being conferred upon the courts"; otherwise the quotation does not make sense. It was further held that there was no limitation placed by section 139 C. C., on the power to entirely release defendant from further payments if the court deemed that proper "having regard to the circumstances of the case." The case contains strong language which might at a glance be considered authority for the power of the court to modify the allowance, but careful reading discloses that the point at issue was whether the court could modify the allowance when it was agreed to be paid during plaintiff wife's *lifetime;* furthermore it was expressly stated that the record did not show that such agreement if it was executed as claimed, was brought to the attention of the trial court at the time of rendition of the interlocutory decree. Obviously the case cannot be considered determinative of the question.

The next case was *Mathews v. Mathews,* 55 Cal. App. 661 (1921), wherein the plaintiff wife recovered a decree of divorce. Defendant moved to modify the decree, alleging a change of circumstances. Prior to the trial of the divorce action the parties stipulated that $30.00 per month "as and for permanent alimony" might be awarded to plaintiff by the court. The interlocutory decree did not show that the stipulation was before the court, but did recite that proofs were taken of the matters alleged in the complaint and made the same award for alimony as agreed upon in the stipulation. This factual element in all probability, wholly destroys the case as an authority on the question, but it appears from the opinion that the higher court assumed that the stipulation was considered by the lower court in fixing the alimony, and upon such assumption said at page 662 *et seq.:*

"When the stipulation was drawn waiving counsel fees and suit money and fixing the amount to be allowed as 'permanent alimony', the defendant was justified in assuming that such alimony was subject to the power of the court to modify as conferred by section 139.

"This section of the Code must be read into the decree, and as the stipulation is not different from the decree it cannot mean more than that the trial court was authorized to award plaintiff thirty dollars a month as permanent alimony on the completion of the trial but that such award was subject to the power of the court to modify as provided in that section."

Effect of Stipulation

From the language of the last quoted paragraph it might be inferred that the court thereby indicated that if the stipulation had been different from the terms of the decree, the lower court would not have had jurisdiction to modify it in any respect different from the stipulation. On the other hand, it might be inferred that in so stipulating, the parties did so subject to the provisions of section 139 C. C., which would reserve to the court in every case, agreement or no agreement, the right to modify the decree upon a proper showing. The facts of the case however support neither of such inferences, and up to the date of this case the question therefore remained undetermined.

No California case has been found which holds that the parties may or may not agree that the alimony shall not be subject to modification under any circumstances. This direct point however was involved in *Kelly v. Kelly, infra.*

In *Parker v. Parker,* 55 Cal. App. 458 (1921) plaintiff *husband* recovered an interlocutory decree. The decree stated that the parties had stipulated in open court that if a decree of divorce should be awarded to either party, the court, instead of dividing the property might provide for the separate maintenance of defendant wife by awarding to her certain property for life and that plaintiff pay her such monthly allowance as in the discretion of the court should seem proper and that such al-

lowance should be secured by a lien upon such property of the plaintiff as might be selected by the court. Pursuant to the stipulation the court awarded to plaintiff certain real property and to defendant for life, $50.00 per month, secured by a lien on certain property of plaintiff. Five years later plaintiff applied to the court to modify the decree and discontinue the cash payments and to release the lien. The court denied the application for release from payments, but did release the lien. Defendant appealed from that portion of the judgment. HELD, that as the divorce was granted *for an offense of the wife* and not of the husband, the court could not grant to the guilty wife any alimony, or make allowance for her support under section 139 C. C., citing cases; that the authority of the court to impress a lien and to award payments to the wife was derived solely from the agreement of the parties, and having accepted the benefit of the decree so made with his consent, plaintiff husband was estopped to deny the "efficacy" of the lien and that when the judgment became final it became as unchangeable as a judgment in any other action. The case manifestly does not aid us for the reason that the divorce was granted for an offense of the wife, taking the case entirely out of the operation of section 139 C. C. (See *Ex parte Spencer,* 83 Cal. 460 (1890).

Agreement of Parties

In *Hughes v. Hughes,* 68 Cal. App. 195 (1924) the facts were: The wife procured a divorce decree by default. In her complaint she pleaded $150.00 as a reasonable amount for permanent maintenance and was awarded that amount by the interlocutory decree as well as by the final decree. Before entry of the final decree, the husband filed an affidavit alleging change in his circumstances and requesting modification to $75.00 per month. The interlocutory decree was thereafter modified as requested. The wife appealed, contending that the lower court was without jurisdiction to make the order for the reason that prior to the entry of the interlocutory decree the parties had made an agreement settling their property rights wherein defendant agreed to pay $150.00 per month as an allowance until plaintiff should remarry. The record on appeal did not contain the contract or otherwise show that it had been considered by the trial court in rendering the decree. HELD, the contention was without merit that the lower court had no jurisdiction to modify the decree relative to alimony because of the agreement of the parties, where there was nothing in the record to show that such agreement was even considered by the trial court at the time of granting the interlocutory decree.

In *Smith v. Superior Court,* 89 Cal. App. 177 (1928) the facts were: Petitioner (under a Petition for Writ of Certiorari) was adjudged guilty of contempt for failure to comply with an order of court fixing and awarding alimony to the wife in a divorce action instituted by her. An interlocutory decree, entered in her favor, and after disposing of the custody of the children, provided that the defendant should pay alimony of $100.00 per month. Later the wife applied for an increase. The interlocutory decree recited payment of $100.00 per month for one year. On the application, the court modified the decree by increasing the alimony as requested. It was for failure to pay the increased alimony that petitioner was adjudged guilty of contempt. He contended in his petition, that in fixing the alimony in the interlocutory decree the court exhausted its jurisdiction to make any further order as to alimony. It appeared that on the same day of the divorce trial the parties entered into a stipulation which was adopted by the court, providing for custody of the children and the alimony awarded in the decree. HELD, that the allowance by the court in the interlocutory decree as for alimony for a specified period of one year was not conclusive; that the court's power in that particular was not exhausted by reason of the provisions in the decree for the support of the wife; that the court could allow alimony even in the absence of express statutory authority, but that under Section 139, C. C., there is given to the Superior Courts a broad discretion in such matters. The court in discussing the section just referred to, cited the Soule case, *supra,* and *Gates v. Gates,* 54 Cal. App. 407 (1921), to the effect that the section gives to the court a continuing jurisdiction in reference to the award and that its authority is not exhausted by the original order, and that the section reserved to the court the right to modify the original award.

The court went on to state that there was no showing in the return to the writ that

the stipulation was introduced into evidence at the trial of the divorce action, but that assuming that it was so introduced, the court was not bound by it in the matter of awarding alimony; that such agreements are subject to the power of the court under Section 139, C. C., to modify or wholly reject, and that inasmuch as the interlocutory decree did not follow the agreement, the presumption was that even if it was introduced into evidence the trial court rejected it in fixing alimony.

Not Bound by Agreement

It would seem that the effect of the decision is: that the court may allow alimony in view of Section 139; that it is not bound by any agreement of the parties relative to alimony; that if it does approve such an agreement or modify it the order subsequently made is an order of the court which, under Section 139, it may at any time modify, by reason of the continuing jurisdiction given by that section. The case is not directly in point however, for, it was presumed by the appellate court that the lower court rejected the agreement in fixing alimony in the first instance, which would leave out entirely, other than as *dictum*, the power of the court to modify the decree in the face of the agreement.

Effect of Agreements

In *Smith v. Smith*, 94 Cal. App. 35 (1928), the facts were the same is in *Smith v. Superior Court, supra*, with the exception of the proceedings on contempt and certiorari which were involved in the latter. In the present case the defendant appealed from the order of modification. It appeared that the stipulation referred to in *Smith v. Superior Court* was presented to the court and "was considered by the court prior to the entry of the decree" (p. 39). Another instrument called an "agreement" was entered into at about the same time, but may be omitted from this discussion inasmuch as it does not bear directly or indirectly upon the problem herein considered. In the appeal from the order of modification, defendant contended that the court had no jurisdiction to make any allowance of alimony by reason of the stipulation referred to. On page 40 of the opinion it was stated:

> "As we read the stipulation, there is nothing therein which in any way tends to limit any payment on the part of the defendant to the plaintiff, or to limit the power of the court to make such further order as it might deem consistent with the necessities of one party and the ability of the other. The stipulation and order of the court did not provide for the payment of a lump sum, but merely that the particular amount specified was to be paid every month for the period of one year, leaving to the court its jurisdiction to make such further order under Section 139 of the Civil Code as the circumstances of the parties might justify."

As to the effect of agreements for payment of alimony adopted by the courts in decreeing divorce, the court on page 44 quoted from the case of *McCahan v. McCahan*, 47 Cal. App. 176 (1920), as follows:

> "The striking force of the opinion in the McCahan case is found in these words: 'Such agreements, if they are to have any force, must be subjected to the examination of the divorce court, and derive their sanction from a decree made by the court with a knowledge of the facts.'"

Then on page 47 is cited *Jennison v. Jennison*, 136 Ga. 202 (1911), which is among the list of authorities holding that the court may later modify the decree as to alimony even though such award has been based upon an agreement of the parties incorporated in the decree.

That case is undoubtedly the strongest of any California cases upon the subject indicating an affirmative holding, and may well be taken to be an authority therefor.

Later Cases

Two later cases will be referred to very briefly. *Johnson v. Johnson*, 104 Cal. App. 283 (1930), is not in point as the divorce in that case was granted for an *offense of the wife* in which case the court has no authority, as expressly stated therein, to grant an allowance to her, and that when the parties agree upon an allowance to be made to the wife notwithstanding her guilt and the lack of power in the court to grant it, the court not having power in the first instance to grant it cannot subsequently modify it. To the same effect is *Johnson v. Superior Court*, 72 C. A. D. 201 (1933).

Decisions From Other States

(1) States holding Court have power to modify.

In *Camp v. Camp*, 158 Mich. 221 (1909), it was held that when such an agreement is once incorporated in the decree, the court obtains jurisdiction to revise the decree so far as it pertains to alimony.

In *Blake v. Blake*, 75 Wis. 339 (1889), it was held that the decree could be modified notwithstanding the incorporation of such an agreement in it.

In *Francis v. Francis*, 192 Mo. App. 710 (1921), the holding was to the same effect as in the Kelly case, *supra*.

In *Maginnis v. Maginnis*, 323 Ill. 113 (1927), it was held that an agreement of the parties fixing alimony when incorporated in the decree loses its contractual nature and that the court may on petition of the husband, modify the decree based thereon in view of changed conditions.

In *Wilson v. Caswell*, 172 N. E. 251 (Mass., 1930), it was held that the parties could not by an agreement embodied in the decree deprive the court of the power to modify the decree when changed conditions were shown to exist.

In *Kunker v. Kunker*, 230 App. Div. 641 (N. Y., 1930), it was held that when the agreement of the parties became incorporated in the decree it became part of the judgment, separate and apart from the contract.

Other Holdings

In *Connolly v. Connolly*, 16 Ohio App. 92 (1922), it was directly held that an allowance for alimony fixed by agreement and carried into the decree was not subject to modification by the court because of changed conditions.

Conclusion

A comparison of the reasoning of the court in *Soule v. Soule, Mathews v. Mathews, Smith v. Superior Court* and *Smith v. Smith, supra*, with the cases collected from other States, clearly indicates a sympathy by the California appellate courts with the line of thought upon the subject which has engaged the courts of New Hampshire, Minnesota, Michigan, Wisconsin, Virginia, Missouri, Florida, Illinois, Massachusetts, New York and Georgia. Add that to the very forceful language and holding of *Smith v. Smith, supra*, and the conclusion is inescapable that if and when our appellate courts are presented with the question, their answer will be in the affirmative.